



**CITY OF BOSTON
STANDARD CONTRACT DOCUMENT**

Form CM10

CONTRACT ID: 000000000000000000045192

Parties

Contractor Legal Name: Open Counter Enterprises Inc (and d/b/a):	City Department Name: Department of Innovation & Technology City Department Head: Jascha Franklin-Hodge
Contractor Address: 25 Taylor Street San Francisco, CA 94102	City Mailing Address: 1 City Hall Square - Room 703 Boston, MA 02201
Contractor Vendor ID: 0000087352	City Billing Address: Auditing Department One City Hall Room M-4 Boston, MA 02201

Contract Details

Description/Scope of Services: (Attach supporting documentation)	
Open Counter Software Maintenance & Support	
Procurement Type:	Contract Version: 0.01
Begin Date: November 01, 2017	End Date: October 31, 2018
Rate: (Attach details of all rates, units, and charges)	Not To Exceed Amt: \$ 102,000.00

Contract Signatures

AUDITING	VENDOR/CONTRACTOR	AWARDING AUTHORITY/OFFICIAL
APPROVED AS TO THE AVAILABILITY OF AN APPROPRIATION OR PURSUANT TO ARTICLE 12 OF THE GENERAL CONDITIONS	AGREES TO PROVIDE THE GOODS OR SERVICES AS INDICATED IN ACCORDANCE WITH THE ASSOCIATED CONTRACT DOCUMENTS	IT IS MY BELIEF THAT THERE IS LITTLE OR NO RISK OF DEFAULT OR UNSATISFACTORY PERFORMANCE BY THE VENDOR/CONTRACTOR
SIGNATURE	SIGNATURE	SIGNATURE
APPROVED APPROPRIATION IN THE AMOUNT OF: \$ 102,000.00		



CITY OF BOSTON

STANDARD CONTRACT GENERAL CONDITIONS

Form CM11

ARTICLE 1 -- DEFINITION OF TERMS:

1.1 The following terms in these Contract Documents shall be construed as follows:

1.1.1 "City" shall mean the City of Boston, Massachusetts.

1.1.2 "Contract" and "Contract Documents" shall include, in the following hierarchy of document precedence, as applicable: the City's Standard Contract Document; these Standard Contract General Conditions; the Invitations for Bids, Requests for Proposals, or other solicitations; the Contractor's responses including Contractor Certifications and Applications, excluding any language stricken by City as unacceptable and including any negotiated statements of work contemplated by the solicitation; and Performance Bonds, which documents are incorporated herein by reference.

1.1.3 "Contractor" shall mean the individual, partnership, corporation or other entity to which this Contract is awarded.

1.1.4 "Official" shall mean the awarding authority/officer acting on behalf of the City in the execution of the Contract.

ARTICLE 2 -- PERFORMANCE:

2.1 The Contractor shall conform to all determinations and directions, in accordance with provisions of this Contract, of the Official concerning all questions which may arise relating to the performance of services under this Contract.

2.2 The Contractor shall, upon written request of the Official, remove from City premises and replace all individuals in the Contractor's employ whom the Official determines to be disorderly, careless or incompetent or to be employed in violation of the terms of this Contract.

2.3 City is entitled to ownership and possession of all deliverables purchased or developed with Contract funds. All work papers, reports, questionnaires and other written materials prepared or collected by the Contractor in the course of completing the work to be performed under this Contract shall at all times be the exclusive property of the City. The Contractor shall not use such materials for any purposes other than the purpose of this Contract without the prior written consent of the Official. All Contractor proprietary rights shall be detailed in the Contract Documents.

2.4 Prior to beginning performance under this Contract, Contractor must receive a Purchase Order from City.

ARTICLE 3 -- ACCEPTANCE OF GOODS OR SERVICES:

3.1 Performance under this Contract shall include services rendered, obligations due, costs incurred, goods and deliverables provided and accepted by City. The City shall have a reasonable opportunity to inspect all goods and deliverables, services performed by, and work product of the Contractor, and accept or reject such goods, deliverables, services, or work product.

ARTICLE 4 -- TIME:

4.1 It is understood and agreed that Contractor's performance shall be timely and meet or exceed industry standards for the performance required.

ARTICLE 5 -- COMPENSATION:

5.1 The Contractor may, in the absence of a payment schedule, periodically submit to the Official invoices, itemizing goods, services, labor and expenses for which compensation is due and requesting payment for goods received or services rendered by the Contractor during the period covered by the invoice.

5.2 Thereupon the Official shall estimate the value of goods or services accepted by the City in accordance with the specific terms and conditions of a Contract, and City shall pay to the Contractor such amount less sums retained under the provisions of Article 8 of these General Conditions.

5.3 The City shall pay in full and complete compensation for goods received and accepted and services performed and accepted under this Contract in an amount not to exceed the amount shown on the face of this Contract paid in accordance with the rate indicated or in accordance with a prescribed schedule. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the City from all claims, liabilities or other obligations relating to the performance of a Contract.

5.4 In the event that this Contract provides for reimbursement by the City to the Contractor for travel or other expenses, the Contractor shall submit such proposed expenses to the Official for approval prior to the incurrence of such expenses, unless the Contract specifically provides otherwise, and all travel reimbursement shall be consistent with the City's Travel Policies and Procedures.

5.5 The Contractor shall furnish such information, estimate or vouchers relating to the goods or services or to documentation of labor or expenses as may be requested by the Official.

ARTICLE 6 -- RELATIONSHIP WITH THE CITY:

6.1 The Contractor is retained solely for the purposes of and to the extent set forth in this Contract. Contractor's relationship to the City during the term of this Contract shall be that of an independent Contractor. The Contractor shall

have no capacity to involve the City in any contract nor to incur any liability on the part of the City. The Contractor, its agents or employees shall not be considered as having the status or pension rights of an employee; provided that the Contractor shall be considered an employee for the purpose of General Laws c. 268A (the Conflict of Interest Law). The City shall not be liable for any personal injury to or death of the Contractor, its agents or employees.

6.2 Unless all the terms and conditions for the delivery or provision of goods or services by the Contractor to the City specified by this Contract are expressly set forth in a writing incorporated herein by reference, such delivery of goods or services shall require written approval of or direction by the Official prior to the incurrence of any liability by the City. The City has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract.

6.3 All alterations or additions, material or otherwise, to the terms and conditions of this Contract must be in writing and signed by the Official and Contractor and filed with the City Auditor. The City's Standard Contract Document and Standard Contract General Conditions shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, including contract forms, purchase orders, or invoices of the Contractor.

6.4 Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

ARTICLE 7 -- ASSUMPTION OF LOSS AND LIABILITY:

7.1 The Contractor shall pay and be exclusively responsible for all debts for labor and material contracted for by Contractor for the rental of any appliance or equipment hired by Contractor and/or for any expense incurred on account of services to be performed under this Contract.

7.2 The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all goods and deliverables, until possession, ownership and full legal title to the goods and deliverables are transferred to and accepted by the City.

7.3 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and assume the defense of the City, its officers, agents or employees, with counsel acceptable to City, which acceptance shall not be unreasonably withheld, from all liabilities, suits, claims, losses, and costs or any other damages against them or any of them arising from any act or omission of the Contractor, its agents, officers, employees, or subcontractors in any way connected with performance under this Contract.

ARTICLE 8 - REMEDIES OF THE CITY:

8.1 If the Contractor provides goods and/or services that do not comply with Contract specifications and requirements as reasonably determined by the Official, the Official may request that the Contractor refurnish services or provide substitute goods at no additional cost to the City until approved by the Official. If the Contractor shall fail to provide satisfactory goods or services, the Official, in the alternative, may make any reasonable purchase or Contract to purchase goods or services in substitution for those due from the Contractor. The City may deduct the cost of any substitute Contract or nonperformance of services together with incidental and consequential damages from the Contract price and shall withhold such damages from sums due or to become due to the Contractor. The City otherwise retains all rights and remedies at law or in equity.

8.2 If the damages sustained by the City as determined by the Official exceed sums due or to become due, the Contractor shall pay the difference to the City upon demand.

8.3 The Contractor shall not be liable for any damages sustained by the City due to the Contractor's failure to furnish goods or services under the terms of this Contract if such failure is in fact caused by the occurrence of a contingency the nonoccurrence of which was a basic assumption under which this Contract was made, including but not necessarily limited to a state of war, act of enemies, embargoes, expropriation or labor strike or any unanticipated federal, state, or municipal governmental regulation or order, provided that the Contractor has notified the Official in writing of such cause as soon as practicable.

8.4 The City may terminate this Contract for cause if the Contractor has breached any material term or condition and has not corrected the breach within a reasonable period of time after written notice from the City identifying the breach. This Contract may be terminated at any time for the convenience of the City at the option of the Official by delivering or mailing to the Contractor at the Contractor's business address a written notice of termination setting forth the date, not less than seven (7) days after the date of such delivery or mailing, when such termination shall be effective. In the event of such termination for convenience, the Contractor shall be compensated for services rendered to the effective date of said termination in accordance with the rates of compensation specified in this Contract. The parties agree that if City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

ARTICLE 9 -- REMEDIES OF CONTRACTOR:

9.1 If damages, other than loss on nonconforming services or on services not performed, are actually sustained by the Contractor due to any act or material omission for which the City is legally responsible, the City may allow a sum equal to

the amount of such damages sustained by the Contractor as determined by the Official in writing, provided the Contractor shall have delivered to the Official a detailed written statement of such damages and cause thereof within thirty (30) days after the act or material omission by the City.

ARTICLE 10 - PROHIBITION AGAINST ASSIGNMENT:

10.1 The Contractor shall not assign, delegate, subcontract or in any way transfer any interest in this Contract without prior written consent of the Official.

ARTICLE 11 - COMPLIANCE WITH LAWS AND PUBLIC POLICY:

11.1 This Contract is made subject to all laws of the Commonwealth of Massachusetts. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

11.2 The Contractor shall provide, at its sole expense, all necessary licenses, permits or other authorizations required by the City, the Commonwealth of Massachusetts or any other governmental agency with proper jurisdiction.

11.3 The Contractor shall where applicable take out and maintain during the term of this Contract such Worker's Compensation insurance as may be reasonably necessary to protect the Contractor from claims under General Laws c. 152 (the Worker's Compensation Law). The Contractor shall at all times maintain professional, liability, and other appropriate insurance as required by the solicitation or as otherwise required by City, but in no event less than the amount and type of insurance coverage sufficient to cover the performance.

11.4 The Contractor agrees and shall require any subcontractor to agree not to discriminate in connection with the performance of work under the Contract against any employee or applicant for employment because of sex, race, color, sexual orientation, gender identity or expression, marital status, parental status, ex-offender status, prior psychiatric treatment, military status, religious creed, disability, national origin, ancestry, source of income, or age, unless based upon a legally permissible and bona fide occupational qualification. The Contractor agrees and shall require any subcontractor to agree to post in conspicuous places notices to be provided by the Massachusetts Commission Against Discrimination, setting forth provisions of the Fair Employment Practice Law of the Commonwealth.

11.5 The Contractor's attention is called to General Laws c. 268A (the Conflict of Interest Law). The Contractor shall not act in collusion with any City officer, agent, or employee, nor shall the Contractor make gifts regarding this Contract or any other matter in which the City has a direct and substantial interest.

11.6 The Contractor shall keep himself fully informed of all City Ordinances and Regulations, and State and Federal laws, which in any manner affect the work herein specified. The Contractor shall at all times observe and comply with said ordinances, regulations or laws, and shall defend, hold harmless, and indemnify the City, its officers, agents and employees against any claim or liability arising from or based on the violations of such ordinances, regulations or laws, caused by the negligent actions or omissions of the Contractor, its agents, or employees.

11.7 In furtherance of the Mayor's Executive Order "Minority and Women Business Enterprise Development" dated December 31, 1987 and the Ordinance entitled "Promoting Minority and Women Owned Business Enterprises in the City of Boston" (Ordinances of 1987, Chapter 14, as amended), it is understood and agreed by the Contractor, and the Contractor by the execution of this Contract so certifies, as follows: (1) That the Contractor shall actively solicit bids for the subcontracting of goods and services from certified minority and women businesses; (2) That in reviewing substantially equal proposals the Contractor shall give additional consideration to the award of subcontracts to certified minority and women bidders.

11.8 The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the U.S. government, the Commonwealth of Massachusetts, or any of its subdivisions.

11.9 The Contractor certifies that neither it nor any of its subcontractors have been subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order or debarment resulting from a violation of G.L. c.149, c.151, or the Fair Labor Standards Act within three (3) years prior to the date of the Contract; or certifies that it has provided copies of any and all of the above to the Official prior to the date of the Contract and any required wage bond or insurance; and certifies that while the Contract is in effect, it will report any instance of the above to the Official within five (5) days of Contractor's receipt. The Contractor agrees and shall require any subcontractor to post in conspicuous places notices to be provided by the City, informing employees of the protections of applicable local, state, and federal law.

11.10 Contractor agrees that they shall comply fully with all state and federal laws and regulations regarding human trafficking and forced labor. Failure to do so will be considered a breach of this Contract.

11.11 If applicable, the Contractor shall comply with the Massachusetts Prevailing Wage Law for public works projects, M.G.L. c.149, s.26-27H, which establishes minimum wage rates for workers on such projects. The Contractor shall comply and shall cause its subcontractors to comply with M.G.L. c.149, s.27B, which requires that a true and accurate record be kept of all persons employed on a project for which the prevailing wage rates are required. The Contractor shall, and shall cause its subcontractors to, submit weekly copies of their weekly payroll records to the City, to the extent the Prevailing Wage Law is applicable.

ARTICLE 12 -- AVAILABLE APPROPRIATION:

12.1 This Contract and payments hereunder are subject to the availability of an appropriation therefor. Any oral or written representations, commitments, or assurances made by the Official or any other City representatives are not binding. Contractors should verify funding prior to beginning performance.

12.2 If the Contract is funded under a grant with the Federal Government, it is being executed without further appropriation pursuant to General Laws c. 44, s.53A.

12.3 When the amount of the City Auditor's certification of available funds is less than the face amount of the Contract, the City shall not be liable for any claims or requests for payment by the Contractor which would cause total claims or payments under this Contract to exceed the amount so certified.

12.4 Unless otherwise expressly provided in a writing incorporated herein by reference, the amount certified by the City Auditor as available funds under this Contract may be increased or decreased by the Official with the written approval of such change by the City Auditor. In the event of any decrease in the amount certified, the Contractor shall be compensated for services rendered to the effective date of such reduction, in accordance with the rates of compensation specified in this Contract.

ARTICLE 13 -- RELEASE OF CITY ON FINAL PAYMENT:

13.1 Acceptance by the Contractor of payment from the City for final services under this Contract shall be deemed to release forever the City from all claims and liabilities, except those which the Contractor notifies the Official in writing within six (6) months after such payment.

ARTICLE 14 -- PUBLIC RECORDS AND ACCESS:

14.1 The Contractor shall provide full access to records related to performance and compliance to the City for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 950 C.M.R. 32.00.

ARTICLE 15 -- STATE TAXATION CERTIFICATION:

15.1 Pursuant to M.G.L. c. 62C, s. 49A, the Contractor certifies under penalties of perjury, that to the best of Contractor's knowledge and belief, Contractor has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support. (NOTE: The Taxpayer Identification Number will be furnished to the Massachusetts Department of Revenue to determine compliance with the above-referenced law).

ARTICLE 16 -- MONIES OWED TO THE CITY:

16.1 Pursuant to M.G.L. c. 60, s. 93, the Contractor agrees that the Collector/Treasurer of the City of Boston may withhold from amounts owing and payable to the Contractor under this Contract any sums owed to any department or agency of the City of Boston which remain wholly or partially unpaid. This shall include but not be limited to unpaid taxes and assessments, police details, and any other fees and charges until such sums owed have been paid in full, and the Collector/Treasurer may apply any amount owing and payable to the Contractor to satisfy any monies owed to the City.

ARTICLE 17 -- BID COLLUSION:

17.1 The Contractor certifies under penalties of perjury that his/her bid or proposal has been made and submitted in good faith and without collusion, fraud, or unfair trade practice with any other person. As used in this article, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals. Any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

ARTICLE 18 -- FORUM AND CHOICE OF LAW:

18.1 Any actions arising out of this Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Boston, Massachusetts which shall have exclusive jurisdiction thereof.

SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement (this “**Agreement**”), is entered into and made effective as of November 1, 2017 (the “**Effective Date**”), by and between Open Counter Enterprises, Inc. (“**Open Counter**”) and the City of Boston (“**City**”).

RECITALS

WHEREAS, City and Accela, Inc. (“**Accela**”) entered into an agreement, dated May 24, 2015 (“**Prime Contract**”), pursuant to which Accela was the prime contractor and Open Counter was a subcontractor.

WHEREAS, in connection with the Prime Contract, City and Open Counter entered into that certain Perpetual License Agreement, dated May 4, 2015, attached to the Prime Contract as Addendum 4 (“**Perpetual License Agreement**”), attached as **Exhibit B-1**. Capitalized terms used in this Agreement not otherwise defined shall have the meaning set forth in the Perpetual License Agreement.

WHEREAS, the parties wish to clarify and amend certain terms of the Perpetual License Agreement;

WHEREAS, the parties wish to set forth the terms and conditions governing the hosting and operation of the Software by City.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Agreement, and intending to be legally bound, the parties hereby agree as follows:

1. **Prime Contract Expired.** City represents and warrants that: (a) as of the Effective Date, the Prime Contract has expired and has not been renewed and that there are no outstanding or surviving obligations of City to Accela under the Prime Contract which have not been fully executed and fulfilled by City, to City’s knowledge; and (b) City has not entered and does not have a current intent to enter into another agreement directly with Accela for the Software or any other services of Open Counter.
2. **Effective Date of License Grant; End Date.** The parties acknowledge and agree, that notwithstanding Section 2 of the Perpetual License Agreement, the parties agree that the effective date of the license granted to City under the Perpetual License Agreement will commence on the Effective Date. Within three (3) business days after the Effective Date, to the extent not already delivered, Open Counter will deliver the Software to City, including the source code thereof.
3. **License Grant Clarification.** The parties acknowledge and agree that the license granted to City in Section 2 of the Perpetual License Agreement include the right by City to make modifications to the Software for purposes of correcting errors and bugs in the Software and to enhance the Software, and all such modifications shall be owned by City.
4. **Confidentiality.** The parties acknowledge and affirm their confidentiality obligations under Section 8 of the Perpetual License Agreement. City acknowledges and agrees that the Software and modifications made thereto by Open Counter, including the source code thereof, constitutes Open Counter’s proprietary and confidential information which may not be disclosed or distributed in any manner to any third party, consistent with City’s obligation under Section 8 of the Perpetual License Agreement.
5. **Services Provided by Open Counter.**

5.1. During the term of this Agreement, Open Counter will, on behalf and for the benefit of City, engage the services of Heroku.com, a third party hosting provider (“**Provider**”), to host the Software. Open Counter will administer such account on behalf of City, including software and security updates, and performance and resource monitoring. The following three applications (which together comprise the Software) will be hosted by the Provider:

- <https://permits.boston.gov> (including isdpermits and bfdpermits)
- <http://opencounter-boston-staging.com>
- <https://zoningcheck.boston.gov>

5.2. Open Counter will make commercially reasonable efforts to maintain an uptime of 99.9% for the Software. Open Counter will notify the City at least 48 hours in advance of any scheduled downtime, and will

notify the City of any unplanned outages within 30 minutes of the first occurrence, which notification may be in the form of email. An "outage" will be any event that causes core functionality of Software to become inaccessible to the public. Open Counter will report the uptime of the Software on a monthly basis. Within two weeks of any major outage occurrence resulting in greater than two (2) hours of unscheduled downtime, Open Counter will work with the Provider to provide a written description of the outage including the root cause and fix, if any.

5.3. During the term of this Agreement, Open Counter will provide the Maintenance Services and Development Services for the Software, each as described in **Exhibit A** hereof. City will provide all information, cooperation and assistance reasonably requested by Open Counter in providing such services. The Maintenance Services and Development Services are referred to collectively as the "**Services**."

6. Fees.

6.1. City will pay the fees below to Open Counter: (a) \$64,500 for annual hosting, invoiced monthly for the month during which hosting is provided (beginning on the Effective Date); (b) \$37,500 for the Maintenance Services described in Section 1 of **Exhibit A**, payable within thirty (30) days after the Effective Date; and (c) \$250/hour for additional Development Services described in Section 2 of **Exhibit A**, invoiced monthly in arrears. For purposes of clarity, the \$37,500 fee payable for the Maintenance Services is non-refundable and constitutes the obligation of the City due and payable notwithstanding any termination of this Agreement.

6.2. All fees payable by City to Open Counter will be due and payable within thirty (30) days after City's receipt of an invoice from Open Counter. If City fails to pay fees by the due date thereof, and then fails to make payment within thirty (30) days after receipt of written notice from Open Counter of its failure to pay fees by the due date thereof, Open Counter may suspend performance of its obligations until payment has been made, in addition to exercising any other remedies that Open Counter may have.

7. Term and Termination.

7.1. The term of this Agreement will commence on the Effective Date and will continue until October 31, 2018, unless earlier terminated.

7.2. In the event that a party materially breaches this Agreement, the non-breaching party, at its option, shall have the right to terminate this Agreement by written notice to the breaching party unless, within thirty (30) calendar days after the breaching party's receipt of written notice specifying such breach in reasonable detail from the other party, the breaching party cures such breach.

7.3. Unless this Agreement is terminated by Open Counter due to City's breach, upon the termination or expiration of this Agreement, Open Counter will transfer to City the administrative rights to the account with the Provider. City understands and acknowledges that the certain third party software and/or services, including those of (a) Provider, (b) Sidekiq, (c) Amazon S3, and (d) Amazon Cloudfront, are required for the hosting and operation of the Software and agrees that upon termination or expiration of this Agreement, City will have the sole obligation and liability to obtain and maintain such third party software and/or services. Upon any termination of this Agreement, City will pay all amounts accrued and payable prior to the date of termination.

8. General.

8.1. Relationship of Parties. Both parties are, and shall remain at all times, independent contractors, and nothing in this Agreement will be construed to create an agency, employment, fiduciary, representative or any other relationship between the parties.

8.2. Assignment. Neither party shall assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, a party may assign this Agreement without the prior written consent of the other party solely in connection with a merger, consolidation, corporate reorganization, sale of all or substantially all of such party's assets, sale of stock, change of name or like event, provided that the assigning party provides reasonable notice of such assignment to the other party. Any attempted assignment other than in accordance with this Section 8.2 shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

8.3. Governing Law. This Agreement shall be governed by and construed in accordance with the

laws of the Commonwealth of Massachusetts, without reference to its conflicts of law provisions. The parties disclaim the application of the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act to this Agreement. If either party brings any proceeding arising out of this Agreement, that party may bring that proceeding only in the United States District Court for the District of Massachusetts or in any state court of Massachusetts sitting in Boston, and each party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding.

8.4. Disclaimers. Notwithstanding anything in the City Terms (defined below): (a) the parties agree that warranty disclaimers set forth in Section 5 of the Perpetual License Agreement remain in effect for the Perpetual License Agreement only; and (b) EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, ACCURACY, AND ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

8.5. Limitations. NOTWITHSTANDING ANYTHING IN THE CITY TERMS, WITH RESPECT TO THE PARTIES' PERFORMANCE UNDER THIS AGREEMENT: (A) CITY AND OPEN COUNTER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, REVENUE, BUSINESS, SAVINGS, DATA OR USE, OR THE COST OF SUBSTITUTE PROCUREMENT, EVEN IF CITY OR OPEN COUNTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES WITH RESPECT TO THIS AGREEMENT; AND (B) EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY ARISING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON NEGLIGENCE, CONTRACT, TORT, INDEMNIFICATION, STRICT LIABILITY OR ANY OTHER THEORY, WILL NOT EXCEED THE FEES ACTUALLY RECEIVED BY OPEN COUNTER FROM CITY UNDER THIS AGREEMENT. For purposes of clarity, the foregoing limitation is not intended to supersede the limitations of liability set forth in Section 6 of the Perpetual License Agreement applicable to Open Counter's performance thereunder or otherwise expand Open Counter's liability under the Perpetual License Agreement.

8.6. Export Control. City agrees to comply fully with all applicable laws, rules and regulations, including the export laws and regulations of the United States and the U.S. Export Administration Regulations (collectively "**Export Controls**"). Without limiting the generality of the foregoing, City will not, and will require its agents and representatives not to, export, direct or transfer the Software or any direct product thereof, to any destination, person or entity restricted or prohibited by the Export Controls.

8.7. Severability. Any determination that any provision of this Agreement or any application thereof is invalid, illegal or unenforceable in any respect in any instance shall not affect the validity, legality and enforceability of such provision in any other instance, or the validity, legality, or enforceability of any other provision of this Agreement.

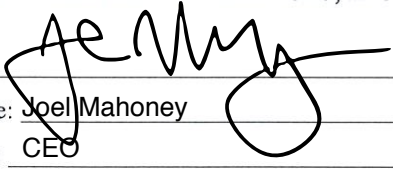
8.8. City Terms. The City's Standard Contract General Conditions (Form CM11), and the Supplemental Information Technology Terms and Conditions to Form CM11 are attached hereto as **Exhibit B-2 and B-3**, respectively. Except as noted below in this Section 8.7, Open Counter agrees that the provisions of Form CM11 and Supplemental Information Technology Terms and Conditions are hereby incorporated herein, and that the references in such documents to "Contractor" shall apply to Open Counter. Notwithstanding the foregoing, (i) the following provisions in Form CM 11 shall have no application to this Agreement: Sections 2.3, 3.1, 4.1, 7.2, 8.1, 8.2, and Article 9, and (ii) paragraph B of Supplemental Information Technology Terms and Conditions to Form CM11 shall have no application to this Agreement. Additionally, Section 8.4 in Form CM11 is modified by changing "...corrected within a reasonable period of time" to read, "...corrected within a reasonable period of time, not to exceed thirty (30) days unless otherwise agreed," and changing "This Contract may be terminated at any time for the convenience of the City at the option of the Official by delivering or mailing to the Contractor at the Contractor's business address a written notice of termination setting forth the date, not less than seven (7) days after the date of such delivery or mailing, when such termination shall be effective" to "This Contract may be terminated at any time for the convenience of the City at the option of the Official by delivering to the Contractor a written notice of termination setting forth the date, not less than thirty (30) days after the date of such delivery, when such termination shall be effective. **Upon any termination, the City will pay for hosting charges through the end of**

that month regardless of the day in such month in which such termination is made effective.” The applicable terms of the City’s General Conditions and the Supplemental Information Technology Terms and Conditions are referred to herein as the “City Terms.”

8.9. Entire Agreement; Amendment. The City Terms, the Perpetual License Agreement and this Agreement together contain the complete understanding of the parties with respect to their respective subject matter hereof and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. No changes, amendments, or alterations to this Agreement shall be effective unless signed by duly authorized representatives of both parties, except as expressly provided herein. No terms on purchase orders, invoices or like documents exchanged between the parties shall modify or supplement the terms of this Agreement and shall be deemed void and shall have no effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date above.

OPEN COUNTER ENTERPRISES, INC.

By: 
Name: Joel Mahoney
Title: CEO
Date: 12/7/2017

CITY OF BOSTON

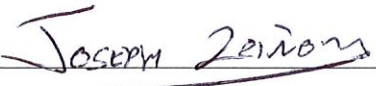
By: 
Name: JOSEPH ZEINOUN
Title: Chief Enterprise Applications
Date: 12/4/2017

Exhibit A

1. **Maintenance Services.** During the one-year term beginning on the Effective Date, Open Counter will provide the following services (collectively, “**Maintenance Services**”): (a) Open Counter will monitor the Software on the basis of 24-hours per day, 7-days per week to determine whether the Software contains any material errors or bugs, and (b) upon becoming aware of a bug or error (whether discovered by Open Counter or reported by City), based on the severity of the bug or error, Open Counter will provide a remediation plan in accordance with **Table 1** below to correct such bug or error. City will notify Open Counter of any bugs and errors via email at support@opencounter.com or through the support widget embedded in the lower right corner of the admin site of the Software. Any modification of the Software to work around or correct a bug or error in the Software, subject to City’s prior written approval, will be provided as part of the Development Services (described in Section 2 below).

As part of the Maintenance Services, Open Counter will provide, on a monthly basis, up to five (5) hours of developer time to correct any bugs and errors in the Software, provided that the bug or error was present in the original version of the Software provided by Open Counter to City and not caused by (a) modifications made by City or a third party to the Software, and (b) any changes made to the equipment, software or systems of City (whether owned by City or licensed by City from third party licensors). Any portion of such five (5) hours not used in a month will not accrue to later months. For purposes of clarity, any Development Services (defined in Section 2 below) provided beyond such five (5) hours, pursuant to a remediation plan approved by City, will be billed and payable by the Hourly Rate (defined in Section 2 below).

Table 1

Severity	Open Counter’s Obligations
Critical: The bug or error affects critical functionality or critical data. Example is unsuccessful installation, complete failure of a feature.	For bugs reported during eastern standard time business hours (between 9am and 5pm EST Monday through Friday, excluding US holidays), Open Counter will provide a plan for remediation to the City within two (2) hours of the first report. In all other cases, Open Counter will provide a plan for remediation to the City within twelve (12) hours of the first report. Remediation plans will include a not-to-exceed cost for resolution based on the Hourly Rate.
Major: The bug or error affects major functionality or major data. It has a workaround but is not obvious and is difficult to administer. Major defects refer to systematic loss of functionality of one or more of the following: <ul style="list-style-type: none">• Application submission, resubmission, and/or submission of uploads via upload requests	For bugs reported during eastern standard time business hours (between 9am and 5pm EST Monday through Friday, excluding US holidays), Open Counter will provide a plan for remediation to the City within four (4) hours of the first report. Remediation plans will include a not-to-exceed cost for resolution based on the Hourly Rate.

<ul style="list-style-type: none"> • Status updates (as delivered and accepted under the previous development contract) • Inability to log in or access projects/permits via dashboard • Failure to surface fees for payment or mark fees as paid provided proper functioning of InvoiceCloud • Location selection, provided proper functioning of the SAM API 	
Minor: The bug or error affects minor functionality or non-critical data.	Open Counter will provide a plan for remediation to the City within three (3) business days of the first report, which will include a not-to-exceed cost for resolution based on the Hourly Rate.
Trivial: The bug or error does not affect functionality or data. It does not even need a workaround. It is merely an inconvenience. Example: layout discrepancies, spelling/grammatical errors.	Open Counter will provide a plan for remediation to the City within five (5) business days of the first report, which will include a not-to-exceed cost for resolution based on the Hourly Rate.

2. **Development Services.** In the event of a bug or error is discovered by Open Counter or reported by City and City approves the remediation plan provided by Open Counter to correct such bug or error (“**Development Services**”), Open Counter will make commercially reasonable efforts to correct such bug or error in accordance with **Table 2** below at an hourly rate of \$250/hour (“**Hourly Rate**”), subject to a remediation plan approved by City, which fee will be billed to City on a monthly basis and payable by City within thirty (30) days after receipt of the applicable invoice.

Table 2

Severity	Open Counter’s Obligations
Critical: The bug or error affects critical functionality or critical data. Example is unsuccessful installation, complete failure of a feature.	Work will begin immediately after City’s approval of the remediation plan.
Major: The bug or error affects major functionality or major data. It has a workaround but is not obvious and is difficult to administer.	Work will begin within one (1) business day after City’s approval of the remediation plan.
Minor: The bug or error affects minor functionality or non-critical data.	Work will begin within two (2) business days after City’s approval of the remediation plan.
Trivial: The bug or error does not affect functionality or data. It does not even need a workaround. It is merely an inconvenience. Example: layout discrepancies, spelling/grammatical errors.	Work will begin within three (3) business days after City’s approval of the remediation plan.

Exhibit B-1
Perpetual License Agreement

PERPETUAL LICENSE AGREEMENT

This **PERPETUAL LICENSE AGREEMENT** ("Agreement") is entered into by and between Open Counter Enterprises, Inc., a C corporation with offices at 1530 Brazil Lane, Santa Cruz, CA 95062 (OpenCounter) and The City of Boston ("Customer"), as of this day of April, 2015 (the "Effective Date").
May 4, 2015

1. **Definitions.** Capitalized terms used herein will have the meaning set forth where such terms are first underlined, provided that capitalized terms used but not defined herein, will have the meanings set forth in the Agreement.

2. **Perpetual License.** At the expiration of the original two (2) or optional three (3) year term of that certain agreement between Accela, Inc. and Customer entered into as of even date herewith in response to DoIT-EV00001595 (the "Prime Contract"), unless otherwise instructed by Customer in writing, OpenCounter shall deliver to Customer the software used to provide the Hosted Service provided to Customer under the Prime Contract (the "Software"), and provide reasonable assistance in the implementation of the same at professional services rates set forth in the Statement of Work to the Prime Contract. Upon delivery of the Software, OpenCounter hereby grants to Customer, a non-exclusive, non-transferable, perpetual right and license, without the right to grant or authorize sublicenses, except as provided herein to use the Software for the purpose of providing Permitting Services. The license granted to Customer includes other government entities within the City of Boston with a primary charter related to the operation of the City of Boston (collectively, "Related Entities"), their employees, agents, and contractors as needed in order to exercise its authority to process licenses and permits, and the right to license and allow Permit Applicants to use the Software for the purpose of providing information to Customer regarding applications for permits or licenses the issuance of which are with Customer's or the Related Entities jurisdiction. "Permitting Services" means online services that allow persons and entities to apply for and, if applicable requirements are met by the applicant, obtain from Customer or the Related Entities those permits, licenses or other permissions for which the Software has been configured.

3. **Reservation of Rights; Restrictions.** As between OpenCounter and Customer, OpenCounter owns all right title and interest in and to the Software and any derivative works thereof, and except as expressly set forth in Section 2 of this Agreement, no other license to the Software is granted to Customer by implication, estoppel or otherwise. Customer agrees not to: (i) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software or any portion thereof to human-readable form, except and only to the extent any such restriction is prohibited by applicable law, (iii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party except as expressly permitted in this Agreement; or (iv) alter or remove any proprietary notices in the Software.

4. **Open Source Software and Additional Services.**

(a) Customer understands and agrees that the Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, "Open Source Software"), which Open Source Software may have applicable license terms as identified on Exhibit A hereto, or otherwise provided with the Software or Documentation. Notwithstanding anything to the contrary herein, use of the Open Source Software shall be subject to the license terms and conditions applicable to such Open Source Software, to the extent required by the applicable licensor (which terms shall not restrict the license rights granted to Customer hereunder, but may contain additional rights).

(b) Customer understands and agrees that the use of the Software to replicate the Hosted Service provided under the Prime Contract may require the use of additional services that communicate with, but are not part of, the Software. A list of all such additional services used by OpenCounter to provide the Hosted Service as of the Effective Date is included in Exhibit A hereto. Customer further understands and agrees that (i) the list of such additional services may change during the term of the Prime Contract, provided OpenCounter will update such list from time to time by providing written notice (e-mail sufficient) to Customer of any such updates, (ii) Customer will be solely responsible for securing the right to use, at Customer's expense, any such additional services, (iii) OpenCounter makes no

representation or warranty regarding the availability, cost or effectiveness of any such additional services and (iv) Customer's ability to secure the use of and use of such additional services will be entirely at Customer's own risk and expense.

5. Warranty Disclaimer. THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND OPENCOUNTER AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR DOCUMENTATION PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, OPENCOUNTER AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION PROVIDED BY OPENCOUNTER HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER, OPENCOUNTER DOES NOT WARRANT RESULTS OF USE OR THAT THE SOFTWARE WILL BE ERROR FREE OR THAT THE CUSTOMER'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED.

6. Limitation of Liability. IN NO EVENT SHALL OPENCOUNTER OR ITS LICENSORS BE LIABLE FOR ANY DIRECT OR INDIRECT DAMAGES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING FROM LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF OPENCOUNTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Assignment. Customer may not assign this Agreement, in whole or in part, without the prior written consent of OpenCounter, which consent will not be unreasonably withheld. Notwithstanding the provisions of this paragraph, Customer may assign this Agreement to a surviving government entity that assumes the Customer's functions as it relates to the use of the Software, subject to thirty (30) days prior notice to OpenCounter. Any assignment in violation of this Section 6 shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.

8. Confidential Information.

Definitions. "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. OpenCounter or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, Software, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section: (i) information which is in Recipient's possession prior to disclosure by Disclosing Party; (ii) information which is available to Recipient from a third party without violation of this Agreement or Disclosing Party's intellectual property rights; (iii) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party; (iv) information which is subpoenaed by governmental or judicial authority; and (v) information subject to disclosure pursuant to a state's public records laws.

CONFIDENTIALITY OBLIGATIONS: DURING THE CONFIDENTIALITY TERM, RECIPIENT WILL PROTECT THE CONFIDENTIALITY OF CONFIDENTIAL INFORMATION USING THE SAME DEGREE OF CARE THAT IT USES TO PROTECT ITS OWN INFORMATION OF SIMILAR IMPORTANCE, BUT WILL IN ANY CASE USE NO LESS THAN A REASONABLE DEGREE OF CARE TO PROTECT CONFIDENTIAL INFORMATION. RECIPIENT WILL NOT DIRECTLY OR INDIRECTLY DISCLOSE CONFIDENTIAL INFORMATION OR ANY PART THEREOF TO ANY THIRD PARTY WITHOUT DISCLOSING PARTY'S ADVANCE EXPRESS WRITTEN AUTHORIZATION TO DO SO. RECIPIENT MAY DISCLOSE CONFIDENTIAL INFORMATION ONLY TO ITS EMPLOYEES OR AGENTS UNDER ITS CONTROL AND DIRECTION IN THE NORMAL COURSE OF ITS BUSINESS AND ONLY ON A NEED-TO-KNOW BASIS. IN RESPONDING TO A REQUEST FOR CONFIDENTIAL INFORMATION, RECIPIENT WILL COOPERATE WITH DISCLOSING PARTY, IN A TIMELY FASHION AND IN A MANNER NOT INCONSISTENT WITH APPLICABLE LAWS IF A PUBLIC DISCLOSURE REQUEST IS MADE TO VIEW OPENCOUNTER'S CONFIDENTIAL INFORMATION, THE CUSTOMER WILL NOTIFY OPENCOUNTER OF THE REQUEST AND OF THE DATE THAT SUCH RECORDS WILL BE RELEASED TO THE REQUESTER IF THEY ARE DEEMED PUBLIC RECORDS SUBJECT TO DISCLOSURE, UNLESS OPENCOUNTER OBTAINS A COURT ORDER FROM A COURT OF COMPETENT JURISDICTION ENJOINING THAT DISCLOSURE.

9. **Term and Termination.** This Agreement will commence on the Effective Date, provided that, for the avoidance of doubt, the license granted herein shall not become effective prior to the expiration of the original two or optional three (3) year term of the Prime Contract, but shall thereafter continue in perpetuity unless earlier terminated in accordance with this Section 9. Customer may terminate this Agreement at any time, for any reason or no reason. OpenCounter may terminate this Agreement upon sixty (60) days' prior written notice to Customer for any material breach of the terms hereof that is not cured by Customer within such sixty (60) day period. For the avoidance of doubt, Customer shall not be entitled to a refund of any amounts paid under the Prime Contract as a result of any termination of this Agreement. Upon any lawful termination of this Agreement by OpenCounter, Customer shall be entitled to a six month limited term license to continue its use of the Software in accordance with the terms hereof, in order to allow the Customer to transition to a new methodology of processing permits and shall thereafter immediately cease to use the Software and shall delete and destroy any and all copies thereof in Customer's possession as under Customer's control.

10. **Governing Law.** This Agreement shall be governed by the laws of Massachusetts, and any actions arising out of this Agreement shall be brought and maintained in a State or federal court in Boston, Massachusetts which shall have exclusive jurisdiction thereof.

11. **Waiver and Modification.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of OpenCounter and Customer by their duly authorized representatives.

12. **Severability.** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

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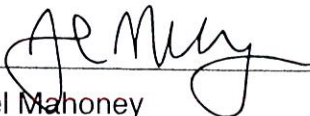
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13. **Entire Agreement.** This Agreement completely and exclusively state the entire agreement of the parties regarding its subject matter, and supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter.

OPENCOUNTER ENTERPRISES, INC.

FOR AND ON BEHALF OF THE CITY OF BOSTON:

Signature: 
Name: Joel Mahoney
Title: Co-Founder
Date: 5/4/2015


Signature: 
Name: Edwin Pinkerton
Title: Senior Data Procurement Systems Analyst
Date: 5/4/15

Exhibit B-2
Standard Contract General Conditions (Form CM11)



CITY OF BOSTON
STANDARD CONTRACT GENERAL CONDITIONS

Form CM11

ARTICLE 1 -- DEFINITION OF TERMS:

1.1 The following terms in these Contract Documents shall be construed as follows:

1.1.1 "City" shall mean the City of Boston, Massachusetts.

1.1.2 "Contract" and "Contract Documents" shall include, in the following hierarchy of document precedence, as applicable: the City's Standard Contract Document; these Standard Contract General Conditions; the Invitations for Bids, Requests for Proposals, or other solicitations; the Contractor's responses including Contractor Certifications and Applications, excluding any language stricken by City as unacceptable and including any negotiated statements of work contemplated by the solicitation; and Performance Bonds, which documents are incorporated herein by reference.

1.1.3 "Contractor" shall mean the individual, partnership, corporation or other entity to which this Contract is awarded.

1.1.4 "Official" shall mean the awarding authority/officer acting on behalf of the City in the execution of the Contract.

ARTICLE 2 -- PERFORMANCE:

2.1 The Contractor shall conform to all determinations and directions, in accordance with provisions of this Contract, of the Official concerning all questions which may arise relating to the performance of services under this Contract.

2.2 The Contractor shall, upon written request of the Official, remove from City premises and replace all individuals in the Contractor's employ whom the Official determines to be disorderly, careless or incompetent or to be employed in violation of the terms of this Contract.

2.3 City is entitled to ownership and possession of all deliverables purchased or developed with Contract funds. All work papers, reports, questionnaires and other written materials prepared or collected by the Contractor in the course of completing the work to be performed under this Contract shall at all times be the exclusive property of the City. The Contractor shall not use such materials for any purposes other than the purpose of this Contract without the prior written consent of the Official. All Contractor proprietary rights shall be detailed in the Contract Documents.

2.4 Prior to beginning performance under this Contract, Contractor must receive a Purchase Order from City.

ARTICLE 3 -- ACCEPTANCE OF GOODS OR SERVICES:

3.1 Performance under this Contract shall include services rendered, obligations due, costs incurred, goods and deliverables provided and accepted by City. The City shall have a reasonable opportunity to inspect all goods and deliverables, services performed by, and work product of the Contractor, and accept or reject such goods, deliverables, services, or work product.

ARTICLE 4 -- TIME:

4.1 It is understood and agreed that Contractor's performance shall be timely and meet or exceed industry standards for the performance required.

ARTICLE 5 -- COMPENSATION:

5.1 The Contractor may, in the absence of a payment schedule, periodically submit to the Official invoices, itemizing goods, services, labor and expenses for which compensation is due and requesting payment for goods received or services rendered by the Contractor during the period covered by the invoice.

5.2 Thereupon the Official shall estimate the value of goods or services accepted by the City in accordance with the specific terms and conditions of a Contract, and City shall pay to the Contractor such amount less sums retained under the provisions of Article 8 of these General Conditions.

5.3 The City shall pay in full and complete compensation for goods received and accepted and services performed and accepted under this Contract in an amount not to exceed the amount shown on the face of this Contract paid in accordance with the rate indicated or in accordance with a prescribed schedule. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the City from all claims, liabilities or other obligations relating to the performance of a Contract.

5.4 In the event that this Contract provides for reimbursement by the City to the Contractor for travel or other expenses, the Contractor shall submit such proposed expenses to the Official for approval prior to the incurrence of such expenses; unless the Contract specifically provides otherwise, and all travel reimbursement shall be consistent with the City's Travel Policies and Procedures.

5.5 The Contractor shall furnish such information, estimate or vouchers relating to the goods or services or to documentation of labor or expenses as may be requested by the Official.

ARTICLE 6 -- RELATIONSHIP WITH THE CITY:

6.1 The Contractor is retained solely for the purposes of and to the extent set forth in this Contract. Contractor's relationship to the City during the term of this Contract shall be that of an independent Contractor. The Contractor shall have no capacity to involve the City in any contract nor to incur any liability on the part of the City. The Contractor, its

agents or employees shall not be considered as having the status or pension rights of an employee; provided that the Contractor shall be considered an employee for the purpose of General Laws c. 268A (the Conflict of Interest Law). The City shall not be liable for any personal injury to or death of the Contractor, its agents or employees.

6.2 Unless all the terms and conditions for the delivery or provision of goods or services by the Contractor to the City specified by this Contract are expressly set forth in a writing incorporated herein by reference, such delivery of goods or services shall require written approval of or direction by the Official prior to the incurrence of any liability by the City. The City has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract.

6.3 All alterations or additions, material or otherwise, to the terms and conditions of this Contract must be in writing and signed by the Official and Contractor and filed with the City Auditor. The City's Standard Contract Document and Standard Contract General Conditions shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, including contract forms, purchase orders, or invoices of the Contractor.

6.4 Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

ARTICLE 7 -- ASSUMPTION OF LOSS AND LIABILITY:

7.1 The Contractor shall pay and be exclusively responsible for all debts for labor and material contracted for by Contractor for the rental of any appliance or equipment hired by Contractor and/or for any expense incurred on account of services to be performed under this Contract.

7.2 The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all goods and deliverables, until possession, ownership and full legal title to the goods and deliverables are transferred to and accepted by the City.

7.3 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and assume the defense of the City, its officers, agents or employees, with counsel acceptable to City, which acceptance shall not be unreasonably withheld, from all liabilities, suits, claims, losses, and costs or any other damages against them or any of them arising from any act or omission of the Contractor, its agents, officers, employees, or subcontractors in any way connected with performance under this Contract.

ARTICLE 8 - REMEDIES OF THE CITY:

8.1 If the Contractor provides goods and/or services that do not comply with Contract specifications and requirements as reasonably determined by the Official, the Official may request that the Contractor furnish services or provide substitute goods at no additional cost to the City until approved by the Official. If the Contractor shall fail to provide satisfactory goods or services, the Official, in the alternative, may make any reasonable purchase or Contract to purchase goods or services in substitution for those due from the Contractor. The City may deduct the cost of any substitute Contract or nonperformance of services together with incidental and consequential damages from the Contract price and shall withhold such damages from sums due or to become due to the Contractor. The City otherwise retains all rights and remedies at law or in equity.

8.2 If the damages sustained by the City as determined by the Official exceed sums due or to become due, the Contractor shall pay the difference to the City upon demand.

8.3 The Contractor shall not be liable for any damages sustained by the City due to the Contractor's failure to furnish goods or services under the terms of this Contract if such failure is in fact caused by the occurrence of a contingency the nonoccurrence of which was a basic assumption under which this Contract was made, including but not necessarily limited to a state of war, act of enemies, embargoes, expropriation or labor strike or any unanticipated federal, state, or municipal governmental regulation or order, provided that the Contractor has notified the Official in writing of such cause as soon as practicable.

8.4 The City may terminate this Contract for cause if the Contractor has breached any material term or condition and has not corrected the breach within a reasonable period of time after written notice from the City identifying the breach. This Contract may be terminated at any time for the convenience of the City at the option of the Official by delivering or mailing to the Contractor at the Contractor's business address a written notice of termination setting forth the date, not less than seven (7) days after the date of such delivery or mailing, when such termination shall be effective. In the event of such termination for convenience, the Contractor shall be compensated for services rendered to the effective date of said termination in accordance with the rates of compensation specified in this Contract. The parties agree that if City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

ARTICLE 9 -- REMEDIES OF CONTRACTOR:

9.1 If damages, other than loss on nonconforming services or on services not performed, are actually sustained by the Contractor due to any act or material omission for which the City is legally responsible, the City may allow a sum equal to the amount of such damages sustained by the Contractor as determined by the Official in writing, provided the Contractor

shall have delivered to the Official a detailed written statement of such damages and cause thereof within thirty (30) days after the act or material omission by the City.

ARTICLE 10 - PROHIBITION AGAINST ASSIGNMENT:

10.1 The Contractor shall not assign, delegate, subcontract or in any way transfer any interest in this Contract without prior written consent of the Official.

ARTICLE 11 - COMPLIANCE WITH LAWS AND PUBLIC POLICY:

11.1 This Contract is made subject to all laws of the Commonwealth of Massachusetts. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

11.2 The Contractor shall provide, at its sole expense, all necessary licenses, permits or other authorizations required by the City, the Commonwealth of Massachusetts or any other governmental agency with proper jurisdiction.

11.3 The Contractor shall where applicable take out and maintain during the term of this Contract such Worker's Compensation insurance as may be reasonably necessary to protect the Contractor from claims under General Laws c. 152 (the Worker's Compensation Law). The Contractor shall at all times maintain professional, liability, and other appropriate insurance as required by the solicitation or as otherwise required by City, but in no event less than the amount and type of insurance coverage sufficient to cover the performance.

11.4 The Contractor agrees and shall require any subcontractor to agree not to discriminate in connection with the performance of work under the Contract against any employee or applicant for employment because of sex, race, color, sexual orientation, gender identity or expression, marital status, parental status, ex-offender status, prior psychiatric treatment, military status, religious creed, disability, national origin, ancestry, source of income, or age, unless based upon a legally permissible and bona fide occupational qualification. The Contractor agrees and shall require any subcontractor to agree to post in conspicuous places notices to be provided by the Massachusetts Commission Against Discrimination, setting forth provisions of the Fair Employment Practice Law of the Commonwealth.

11.5 The Contractor's attention is called to General Laws c. 268A (the Conflict of Interest Law). The Contractor shall not act in collusion with any City officer, agent, or employee, nor shall the Contractor make gifts regarding this Contract or any other matter in which the City has a direct and substantial interest.

11.6 The Contractor shall keep himself fully informed of all City Ordinances and Regulations, and State and Federal laws, which in any manner affect the work herein specified. The Contractor shall at all times observe and comply with said ordinances, regulations or laws, and shall defend, hold harmless, and indemnify the City, its officers, agents and employees against any claim or liability arising from or based on the violations of such ordinances, regulations or laws, caused by the negligent actions or omissions of the Contractor, its agents, or employees.

11.7 In furtherance of the Mayor's Executive Order "Minority and Women Business Enterprise Development" dated December 31, 1987 and the Ordinance entitled "Promoting Minority and Women Owned Business Enterprises in the City of Boston" (Ordinances of 1987, Chapter 14, as amended), it is understood and agreed by the Contractor, and the Contractor by the execution of this Contract so certifies, as follows: (1) That the Contractor shall actively solicit bids for the subcontracting of goods and services from certified minority and women businesses; (2) That in reviewing substantially equal proposals the Contractor shall give additional consideration to the award of subcontracts to certified minority and women bidders.

11.8 The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the U.S. government, the Commonwealth of Massachusetts, or any of its subdivisions.

ARTICLE 12 -- AVAILABLE APPROPRIATION:

12.1 This Contract and payments hereunder are subject to the availability of an appropriation therefor. Any oral or written representations, commitments, or assurances made by the Official or any other City representatives are not binding. Contractors should verify funding prior to beginning performance.

12.2 If the Contract is funded under a grant with the Federal Government, it is being executed without further appropriation pursuant to General Laws c. 44, s.53A.

12.3 When the amount of the City Auditor's certification of available funds is less than the face amount of the Contract, the City shall not be liable for any claims or requests for payment by the Contractor which would cause total claims or payments under this Contract to exceed the amount so certified.

12.4 Unless otherwise expressly provided in a writing incorporated herein by reference, the amount certified by the City Auditor as available funds under this Contract may be increased or decreased by the Official with the written approval of such change by the City Auditor. In the event of any decrease in the amount certified, the Contractor shall be compensated for services rendered to the effective date of such reduction, in accordance with the rates of compensation specified in this Contract.

ARTICLE 13 -- RELEASE OF CITY ON FINAL PAYMENT:

13.1 Acceptance by the Contractor of payment from the City for final services under this Contract shall be deemed to

release forever the City from all claims and liabilities, except those which the Contractor notifies the Official in writing within six (6) months after such payment.

ARTICLE 14 -- PUBLIC RECORDS AND ACCESS:

14.1 The Contractor shall provide full access to records related to performance and compliance to the City for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 950 C.M.R. 32.00.

ARTICLE 15 -- STATE TAXATION CERTIFICATION:

15.1 Pursuant to M.G.L. c. 62C, s. 49A, the Contractor certifies under penalties of perjury, that to the best of Contractor's knowledge and belief, Contractor has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support. (NOTE: The Taxpayer Identification Number will be furnished to the Massachusetts Department of Revenue to determine compliance with the above-referenced law).

ARTICLE 16 -- MONIES OWED TO THE CITY:

16.1 Pursuant to M.G.L. c. 60, s. 93, the Contractor agrees that the Collector/Treasurer of the City of Boston may withhold from amounts owing and payable to the Contractor under this Contract any sums owed to any department or agency of the City of Boston which remain wholly or partially unpaid. This shall include but not be limited to unpaid taxes and assessments, police details, and any other fees and charges until such sums owed have been paid in full, and the Collector/Treasurer may apply any amount owing and payable to the Contractor to satisfy any monies owed to the City.

ARTICLE 17 -- BID COLLUSION:

17.1 The Contractor certifies under penalties of perjury that his/her bid or proposal has been made and submitted in good faith and without collusion, fraud, or unfair trade practice with any other person. As used in this article, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals. Any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

ARTICLE 18 -- FORUM AND CHOICE OF LAW:

18.1 Any actions arising out of this Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Boston, Massachusetts which shall have exclusive jurisdiction thereof.

Exhibit B-3

Supplemental Information Technology Terms and Conditions to Form CM11

CITY OF BOSTON

SUPPLEMENTAL INFORMATION TECHNOLOGY TERMS AND CONDITIONS TO FORM CM11

The following terms and conditions are added to the City of Boston Standard Contract General Conditions (Form CM11), to the extent permitted by law, for purposes of Contract number _____ between the City of Boston and _____.

A. Indemnification for Information Technology Contracts. This paragraph A is in lieu of and replaces paragraph 7.3 of Form CM11. Contractor agrees to indemnify, defend and hold harmless the City, its officers, agents and employees from all liabilities, suits, claims, damages, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract.

Further, the Contractor will, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City, its officers, agents, and employees, from all liabilities, suits, claims, damages, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. intellectual property rights, including copyright and patent, by any goods or services provided hereunder, provided, that the foregoing obligation shall not apply to the extent of an action or claim resulting from the City's misuse of Contractor's goods or services.

B. Limitation of Liability for Information Technology Contracts. Contractor's liability for damages to the City for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the greater of One Hundred Thousand Dollars (\$100,000.00) or two times the Purchase Price. The "Purchase Price" will mean the Not to Exceed Contract amount, including amendments; except that, with respect to a Contract under which multiple project awards are made (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total aggregate price of the purchase order(s) for the Deliverable(s) or service(s) for each project awarded under a Master Agreement. The foregoing limitation of liability shall not apply (i) to liability for Patent or Copyright infringement liability or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; or (ii) to claims arising under provisions herein calling for indemnification that include third party claims against the City for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct.

The City's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in section B. above. Nothing herein shall be construed to waive or limit the City's sovereign immunity or any other immunity from suit provided by law.

In no event will either the Contractor or the City be liable for consequential, incidental, indirect, or special damages, including lost profits, lost revenue, or damages from lost data or records (unless the contract or Statement of Work requires the Contractor to back-up data or records), even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section B(i) or B(ii) above. Notwithstanding any other provision in this Contract, nothing herein is intended to limit the City's ability to recover, where applicable, the reasonable costs the City incurs to repair, return, replace or seek cover (purchase of comparable substitute goods or services) under a Contract. Nothing in this section shall limit the City's ability to negotiate higher limitations of liability in a particular Contract.

C. Confidentiality, Protection of Personal Data and Information. The Contractor agrees to maintain the security and confidentiality of all City data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under G.L. c. 93H and c. 66A. The Contractor is required to comply with G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. Provided further that any Contractor having access to credit card or banking information of City or its customers certifies that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards and shall provide confirmation of compliance during the Contract; provided further that the Contractor shall immediately notify the City in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the City and provide access to any information necessary for the City to respond to the security breach and Contractor shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.